

ABILL

ENTITLED

AN ACT to Amend the Judicature (Appellate Jurisdiction) Act.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Judicature (Appellate Jurisdiction) (Amendment) Act, 2021, and shall be read and construed as one with the Judicature (Appellate Jurisdiction) Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

Insertion of
new section
18A in
principal Act.

2. The principal Act is amended by inserting next after section 18 the following section—

“Appeal by
prosecutor.

18A.—(1) In this section—

“administration of justice offence” means any offence of—

- (a) perverting the course of justice;
- (b) bribery or intimidation of, or interference with, a witness, juror or judicial officer; or
- (c) perjury,

and for the avoidance of doubt, includes aiding, abetting, or conspiring, in any offence specified in paragraph (a), (b) or (c);

“judicial officer” means—

- (a) a Judge of the Supreme Court or Court of Appeal;
- (b) a Master of the Supreme Court;
- (c) the Registrar of the Court of Appeal, Supreme Court or Revenue Court;
- (d) a Deputy Registrar of the Court of Appeal, Supreme Court or Revenue Court;
- (e) a Judge of a Parish Court; or
- (f) a prosecutor;

“prosecutor”, in relation to a case, means—

- (a) the Director of Public Prosecutions, an attorney-at-law employed in the office of the Director of Public Prosecutions, or an attorney-at-law to whom the Director of Public Prosecutions has granted a fiat to prosecute the case;
- (b) a Clerk of the Courts;

- (c) the Director of Corruption Prosecutions, appointed under the Integrity Commission Act, or an attorney-at-law pursuant to an instrument of delegation under section 34(6) of that Act;
- (d) the Director-General of the Major Organized Crime and Anti-Corruption Agency, appointed under the Major Organized Crime and Anti-Corruption Agency Act, or a prosecuting officer appointed under section 19 of that Act; or
- (e) a person who has initiated a private prosecution of the case;

“Supreme Court” includes the High Court Division and the Circuit Court Division of the Gun Court established under the Gun Court Act.

(2) Subject to subsection (4), in any case tried on indictment in the Supreme Court, the prosecutor may appeal to the Court of Appeal against—

- (a) a decision of a Judge of the Supreme Court—
 - (i) on any point of law;
 - (ii) on any point of mixed law and fact; or
 - (iii) on the ground that there has been an administration of justice offence,

where the decision results in an acquittal, the quashing or staying of an indictment, the withdrawal of a case from a jury, the upholding of a no-case submission, or any other termination of the case without a verdict of conviction; or

- (b) sentence imposed by the Supreme Court on conviction, if the appeal is on the grounds that—
 - (i) the Supreme Court did not have the power to impose the sentence; or
 - (ii) the sentence imposed is manifestly inadequate or unduly lenient (unless the sentence imposed is the maximum sentence permitted under the applicable laws).

(3) Where a prosecutor intends to appeal under subsection (2), or to obtain the leave of the Court to do so, the prosecutor shall give notice thereof, in such manner as may be directed by rules of court, within fourteen days after the date of the decision or sentence (as the case may be) or such longer period as the Court may allow.

(4) Leave of the Court—

- (a) is not required for an appeal under subsection (2)(a)(i) or (2)(b)(i);
- (b) is required for an appeal under sub-section 2(a)(ii) or (iii) or (2)(b)(ii).

(5) The Court may grant an application for leave to appeal under subsection—

- (a) (2)(a)(ii) if the Court thinks fit; or
- (b) (2)(a)(iii) if the Court is satisfied that—
 - (i) but for the commission of the administration of justice offence, it is more likely than not that the accused person would have been convicted of the offence

charged in the proceedings in which the decision sought to be appealed was made;

- (ii) there has not been a lapse of time or any other factor that would make it contrary to the interests of justice to permit the appeal to be made by the prosecutor; and
- (iii) the respondent has been given a reasonable opportunity to make written representation to the Court in connection with the application for leave to appeal,

and the Court may, in any case where such leave is granted, proceed to hear the matter accordingly.

(6) The Court may grant an application for leave to appeal under subsection (2)(b) if the Court is satisfied that—

- (a) the trial judge erred in law as to the court's powers of sentencing; or
- (b) the sentence concerned is materially less than the generally expected and accepted level of sentence for the offence committed, having regard to the sentencing guidelines (if any) applicable to the offence, and the circumstances surrounding the offence.

(7) In any case where notice of appeal is given under subsection (3), the Court may order that the accused person be detained in custody pending the determination of the appeal, if the Court is satisfied that grounds exist that would justify the denial of bail to the accused person under the provisions of the Bail Act.

(8) Upon hearing an appeal under this section, the Court may—

(a) in the case of an appeal against sentence—

- (i) quash the sentence imposed by the trial court and substitute such sentence as the Court considers appropriate; or
- (ii) affirm the sentence of the trial court and dismiss the appeal;

(b) in the case of any decision referred to in subsection (2)(a)—

- (i) quash the decision and substitute such other decision as the Court considers appropriate; or
- (ii) affirm the decision and dismiss the appeal,

but where a decision to acquit is quashed, the Court shall not substitute a guilty verdict but shall order a re-trial of the case.”.

Amendment of section 19 of principal Act.

3. Section 19 of the principal Act is amended by deleting the words “the trial of any person who, if convicted, is entitled or may be given leave to, appeal” and substitute therefor the words “a trial in respect of which a right of appeal is given to a person, if convicted, or to the prosecutor;”.

Amendment of section 21 of principal Act.

4. Section 21 of the principal Act is amended in subsection (1) by deleting the words “his appeal” and substituting therefor the words “any appeal in respect of the person’s conviction or against any decision referred to in section 18A”.

5. The principal Act is amended by inserting next after Part V the following Part—

Insertion of
new Part V^A
in principal
Act.

“ PART V^A.—*References on Points of Law or
of Mixed Law and Fact*

Reference by 23A.—(1) Where an accused person tried on—
prosecutor.

- (a) indictment; or
- (b) information before a Judge of a Parish Court by virtue of a special statutory summary jurisdiction,

has been acquitted, whether in respect of the whole or part of the indictment or information, and the prosecutor desires the opinion of the Court on—

- (i) any point of law;
- (ii) any point of mixed law and fact;
or
- (iii) where the trial was conducted by a judge sitting without a jury, any point of fact,

that has arisen in the case, the prosecutor may refer that point to the Court and the Court shall, in accordance with this section, consider the point and give its opinion thereon.

(2) Where in any criminal proceeding—

- (a) an accused person has been discharged on the grounds that—
 - (i) there is no case to answer;
 - (ii) the proceedings have been stayed as an abuse of process;
or
 - (iii) a ruling has been issued that would otherwise have the effect of terminating the trial; and

- (b) the prosecutor desires the opinion of the Court on a point of law, or any point of mixed law and fact, or on any point of fact (in the case of a trial by a judge sitting alone), that has arisen in the case,

the prosecutor may refer that point to the Court and the Court shall, in accordance with this section, consider the point and give its opinion thereon.

(3) For the purpose of considering any point referred to it under this section, the Court shall hear argument by—

- (a) the prosecutor; and
- (b) in any case where the accused person desires to present argument to the Court in respect of the point, counsel for the accused person or, with the leave of the Court, the accused person himself.

(4) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal.

(5) In this section “prosecutor” has the meaning assigned to it in section 18A.”

Amendments
to other
enactments.

6.—(1) Section 15 of the Legal Aid Act is amended—

- (a) in subsection (1) by—
 - (i) deleting the word “or” at the end of paragraph (a);
 - (ii) deleting the comma at the end of paragraph (b) and substituting therefor a semi-colon and the word “or”; and
 - (iii) inserting the following as paragraph (c) —
 - “(c) a respondent on any criminal appeal, under the Judicature (Appellate Jurisdiction) Act or the Judicature (Parish Court) Act, by a prosecutor.”;

- (b) in subsection (4)(a), (b) and (c), by deleting in each case the words “from conviction”.

(2) The Criminal Justice (Administration) Act is amended—

- (a) in section 7 by deleting the words “In any plea” and substituting therefor the words “Subject to section 7A, in any plea”;
- (b) by inserting next after section 7 the following section -

7A.—(1) This section applies in any case where a person (“the defendant”) has been acquitted of an offence in proceedings—

- (a) on indictment;
- (b) on information by virtue of the special statutory summary jurisdiction of a Judge of a Parish Court; or
- (c) on appeal against a conviction, or on appeal from a decision on such appeal.

(2) An application may be made to the Court of Appeal for the re-trial of the case, on the grounds that—

- (a) there is new and compelling evidence in the case; and
- (b) it is in the public interest for the case to be re-tried.

(3) An application under subsection (2) may be made by—

- (a) the Director of Public Prosecutions, in any case where the Director of Public Prosecutions is the prosecutor; or
- (b) in any other case, by the prosecutor only with the consent of the Director of Public Prosecutions.

(4) The Director of Public Prosecutions may give consent to the prosecutor to proceed under subsection (3)(b) if the Director of Public Prosecutions is satisfied as to the grounds specified in subsection (2)(a) and (b).

(5) No more than one application may be made under subsection (2) in relation to an acquittal.

(6) On an application under subsection (2), the Court of Appeal shall make the order for re-trial if the Court is satisfied that the grounds specified in subsection (2)(a) and (b) are met.

(7) For the purposes of this section—

- (a) evidence is new and compelling if—
 - (i) it was not adduced in the proceedings in which the defendant was acquitted nor, if those were appeal proceedings, in earlier proceedings to which the appeal related;
 - (ii) it is reliable;
 - (iii) it is substantial; and
 - (iv) in the context of the issues in dispute in the proceedings, it appears highly probative of the case against the defendant,and for the purposes of this section it is irrelevant whether the evidence would have been admissible in earlier proceedings against the defendant;
- (b) the question whether it is in the public interest for a case to be re-tried shall be determined having regard in particular to—
 - (i) whether existing circumstances make a fair trial unlikely;

- (ii) the length of time since the offence was committed;
 - (iii) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the defendant but for a failure by the prosecutor, or any person having duties in relation to the investigation of the alleged offence, to act with due diligence or expedition in relation to the matter; and
 - (iv) whether, since those proceedings or, if later, since the coming into operation of this section, any prosecutor or any person having duties in relation to the investigation of the alleged offence has failed to act with due diligence or expedition in relation to the matter;
- (c) “prosecutor”, in relation to a case, means—
- (i) the Director of Public Prosecutions, an attorney-at-law employed in the office of the Director of Public Prosecutions or an attorney-at-law to whom the Director of Public Prosecutions has granted a fiat to prosecute the case;
 - (ii) a Clerk of the Courts;
 - (iii) the Director of Corruption Prosecutions, appointed under

the Integrity Commission Act, or an attorney-at-law pursuant to an instrument of delegation under section 34(6) of that Act;

- (iv) the Director-General of the Major Organized Crime and Anti-Corruption Agency, appointed under the Major Organized Crime and Anti-Corruption Agency Act, or a prosecuting officer appointed under section 19 of that Act; or
- (v) a person who has initiated a private prosecution of the case.

(8) A prosecutor who wishes to make an application under this section shall give notice of the application to—

- (a) the Court of Appeal; and
- (b) the defendant, not more than two days after service of the notice under paragraph (a), or such longer time as the Court of Appeal may allow on application by the prosecutor.

(9) The Court of Appeal shall hear an application under this section and—

- (a) the defendant is entitled to be present at the hearing and, whether present or not, is entitled to be represented at the hearing;
- (b) the Court of Appeal may for the purpose of hearing the application—
 - (i) order the production of any document, exhibit or any other thing, the production of which the Court considers necessary

for determining the application;
and

- (ii) order any witness, who would be a compellable witness in proceedings pursuant to an order or declaration made on the application, to attend for examination and be examined before the Court; and

- (c) the Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

(10) The following provisions apply where a person is to be re-tried pursuant to an order made under this section—

- (a) the trial shall be on an indictment preferred by the prosecutor on the direction of the Court of Appeal;
- (b) the trial court shall fix a date for the re-trial, being a date falling not more than two months after the date of the order; and
- (c) evidence given at the re-trial shall be given orally if it was given orally at the original trial, unless—
 - (i) all the parties to the re-trial agree otherwise; or
 - (ii) the evidence is admissible other than orally, under another provision of any law.”.

MEMORANDUM OF OBJECTS AND REASONS

Under present law, the prosecution has no right of appeal against a verdict of acquittal in criminal proceedings, or against the imposition of an inappropriately lenient sentence.

A decision has been taken to enact legislation to grant to the prosecution a right of appeal against—

- (a) a verdict of acquittal in criminal proceedings where there has been an administration of justice offence or where a decision by the trial judge is erroneous on a point of law or a point of mixed law and fact; and
- (b) a sentence imposed in criminal proceedings, where the sentence is materially less than the generally expected and accepted level of sentence for the offence concerned, having regard to any sentencing guidelines applicable to the offence concerned.

A respondent in such an appeal may seek legal aid.

This Bill seeks to amend the Judicature (Appellate Jurisdiction) Act in order to give effect to that decision.

A decision has also been taken to empower the prosecution to apply for a retrial on an acquittal, in certain circumstances.

This Bill effects consequential amendments to other enactments as necessary to implement the aforementioned decisions, and is a companion measure to the Bill shortly entitled the Judicature (Parish Courts) (Amendment) Act, 2021.

DELROY CHUCK
Minister of Justice.

A BILL

ENTITLED

AN ACT to Amend the Judicature (Appellate
Jurisdiction) Act.

As introduced by the Minister of Justice.

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